IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO. 141 OF 2005

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JHP Securities Pvt.Ltd. ...Petitioner

v/s.

Niskalp Investments & Trading Co.Ltd. ...Respondent

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Mr.Sham Diwan with Mr.Benzin Samandy and Mr.Sanatam Panigrah i/b M & M Legal Venture for the Petitioner.

Mr.D.J.Khambata and Mr.Gautam Ankhad i/b M/s.Kartikeya & Associates for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 25TH OCTOBER,2005

P.C.:

1. By the Petition the Petitioner challenges the award made by the original Arbitral Tribunal dated 30th July, 2004 directing the Petitioner to pay an amount of Rs.33,00,153.30 with interest to the Respondent, as also the award made by the Appellate Arbitral Tribunal dismissing the appeal filed by the Petitioner.

2. Before me the award was challenged only on two grounds, (i) that the Tata Finance Limited has filed Civil Suit No.1844 of 2002, to which both the Petitioner and the Respondent have been joined as parties. It was the contention of the Petitioner before both the tribunals that as the Tata Finance Limited of which the Respondent is the wholly owned subsidiary has filed civil suit No.1844 of 2002 before this Court for recovery of an amount of Rs.422 crores and to that suit the Petitioner and the Respondent have both joined as parties, arbitration cannot proceed. However, this contention was rejected by the Appellate Arbitral Tribunal by observing that in

that civil suit no claim is made against the present Petitioner. It is submitted that perusal of the plaint of that civil suit, however, shows that actually claim has been made against the present Petitioner. (ii) second challenge is that in the written statement it was claimed by the Petitioner that an amount of Rs.12,96,970/- was recoverable by the Petitioner from the Tata Finance Ltd. However, that claim has not been considered either by the original Arbitral Tribunal or by the Appellate Arbitral Tribunal.

3. I have heard the learned Counsel for both sides at length. I have also gone through the record. So far as the first submission is concerned, perusal of the award made by the appellate tribunal shows that the appellate tribunal has considered the pendency of civil suit filed by the Tata Finance Ltd and has also dealt with the contentions urged on behalf of the Petitioner. In the award made by the appellate arbitral tribunal, the appellate arbitral tribunal has observed thus:-

> "When the learned counsel for the Appellate was advancing the arguments on this point,

> he was asked under what provision of law he is claiming that the arbitrators cannot or should not proceed with the reference. The learned counsel stated that he would rely on principle akin to sec. 10 of civil procedure code but could not make out a concrete case and later on stated that if he is able to find out any legal support for the arguments he would produce it afterwards which he never produced. Suffice it to say it that the argument is totally lacking in merits and deserves rejection outright."

4. Thus, the appellate arbitral tribunal has held that even assuming that Tata Finance Limited has made a claim for recovery of this amount from the Petitioner in the civil suit, there is no provision of law pointed out to the tribunal by the Petitioner which will debar the arbitral tribunal to decide the disputes. Thus, I find that at least the appellate tribunal has considered the objection raised by the Petitioner in proper perspective. The transactions between the Petitioner and the Respondent were in

relation to transaction on the Bombay Stock Exchange and therefore there was a statutory arbitration clause. The arbitral tribunal has , therefore, jurisdiction to adjudicate the disputes arising between the parties in relation to the transactions on Stock Exchange. Assuming that holding company of the Respondent files a civil suit seeking recovery of very same amount from the Petitioner, then also the jurisdiction of the arbitral tribunal to adjudicate that claim will not be taken away. Thus, I find that the objection raised itself does not have any substance. Similarly, the submission that was made that the contention has not been properly considered by the arbitral tribunal also does not have any substance.

5. So far as the second challenge that the claim made by the Petitioner in the written statement that an amount of Rs.12,96,970/- is recoverable by the Petitioner from the Tata Finance ltd. and therefore he is entitled to claim adjustment of that amount is not considered by the arbitral tribunal is concerned, in my opinion, that submission also does not have any substance. Perusal of the award made by the arbitral tribunal shows that the appellate

arbitral tribunal has referred to that aspect of the matter and has declined to consider that aspect of the matter because a claim as contemplated by the bye-laws was not made before the arbitral tribunal. Though, it is true that that submission of the Petitioner has not been considered in detail by the arbitral tribunal, however, as I find that the submission has not been totally ignored by the arbitral tribunal, in my opinion, the award cannot be set aside on this ground. In any case that contention could not have been considered by the appellate tribunal in the present reference, because the arbitral tribunal gets jurisdiction to decide the disputes between the parties to the arbitration agreement. Parties to the arbitration agreement were the Petitioner and the Respondent. Perusal of the provisions of Section 35 of the Act shows that the award made by the arbitrator is binding on the parties and the persons claiming under them. The term "party" is defined by Section 2(1)(h) of the Act to mean a party to an arbitration agreement. Therefore, the award made by the arbitral tribunal binds only the person who is party to the arbitration agreement or to a person who is claiming under that party. A holding company cannot be

termed as a party claiming under a subsidiary company and therefore, the arbitral tribunal could not have inquired into the question whether the Petitioner was entitled to claim an amount of Rs.12,96,970/- from Tata Finance Ltd., as the Tata Finance Ltd. was not a party to the arbitration agreement between the Petitioner and the Respondent. Perusal of bye-law No.271 of Bye-laws of the Bombay Stock Exchange shows that the other party can make a counter claim or can claim a set off only against the first party. The claim of the Petitioner who was the other party for Rs.12,96,970/- was not against the Respondent who is the first party. Therefore, in no case the arbitral tribunal could have got jurisdiction to adjudicate the claim made by the Petitioner against the Tata Finance Ltd., which was not a first party within the meaning of the bye-laws of the Bombay Stock Exchange.

6. Taking overall view of the matter, in my opinion, the view taken by the original arbitral tribunal as also the appellate arbitral tribunal, in any event, is a possible view of the material on record and therefore, considering the extremely limited jurisdiction of this court to interfere with

the award made by the arbitral tribunal, especially the arbitral tribunal appointed by the trade body, the petition fails and is dismissed. The Petitioner is directed to pay costs of this petition to the Respondent as incurred by the Respondent.

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